

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

HAROLD B. WILSON, and GRACY)
S. SEDLAK,)

8:13CV130

Plaintiffs,)

v.)

**MEMORANDUM
AND ORDER**

FRANK HOPKINS, Asst Dir, All in)
their individual and professional)
capacities,)

Defendant.)

This matter is before the court on Plaintiff Gracy Sedlak's notice of appeal (Filing No. [41](#)). The notice of appeal was filed 42 days after the court entered judgment in this matter.

Federal Rule of Appellate Procedure 4(a)(1)(A) sets forth that a notice of appeal in a civil case must be filed within 30 days of the entry of judgment. This requirement is both "mandatory and jurisdictional." [Burgs v. Johnson Cnty., Iowa, 79 F.3d 701, 702 \(8th Cir. 1996\)](#). A district court may extend the time to file a notice of appeal if a party moves for an extension of time and shows excusable neglect or good cause, provided that the party moves for the extension of time within 30 days of the expiration of the 30-day period set out in Rule 4(a)(1)(A). [Fed. R. App. P. 4\(a\)\(5\)\(A\)\(ii\)](#). In addition, if a party files one of the post-judgment motions listed in Rule (a)(4)(A), the time to file the appeal runs from the entry of the order disposing of the motion. [Fed. R. App. P. 4\(a\)\(4\)\(A\)](#). An untimely notice of appeal cannot serve as a motion for extension of time to file an appeal. [Burgs, 79 F.3d at 702](#).

Here, the court entered a final judgment dismissing this case on November 3, 2014. Plaintiff filed her notice of appeal 42 days later. She did not file any post-judgment motions that would extend the time to file a notice of appeal. In addition,

she did not move to extend the time to file a notice of appeal. Accordingly, the court finds Plaintiff did not file a timely notice of appeal.

IT IS ORDERED that:

1. Plaintiff's notice of appeal was not timely filed.
2. The clerk's office is directed to send a copy of this order to the Eighth Circuit Court of Appeals.

DATED this 15th day of January, 2015.

BY THE COURT:

Richard G. Kopf
Senior United States District Judge

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